

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FREDERICK OMOYUMA SILVER,

Case No. 2:19-cv-00032-APG-PAL

Plaintiff,

V.

STEVEN B. WOLFSON, et al.,

ORDER

(Mots. – ECF Nos. 13, 17, 20, 21, 22, 23, 42)

Defendants.

12 This matter is before the court on Plaintiff Frederick Omoyuma Silver's Motion for Non-
13 Consent to Magistrate Judge (ECF No. 13), Motions to Compel Discovery (ECF Nos. 17, 20),
14 Motion for Clarification re: Proof of Employment (ECF No. 21), and Motions for Production of
15 Documents (ECF Nos. 22, 23, 42). These motions are referred to the undersigned pursuant to 28
16 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local Rules of Practice. The court has considered the
17 motions and the Response (ECF No. 37) filed by Defendants Jane Femiano and Arthur Ritchie, Jr.

BACKGROUND

19 Mr. Silver is proceeding in this case *pro se*, which means he is not represented by an
20 attorney. *See LSR 2-1.* This case involves Silver's allegations of civil rights violations pursuant
21 to 42 U.S.C. § 1983 with regard to a child support order entered by the Eighth Judicial District
22 Court of the State of Nevada. On January 3, 2019, Silver commenced this action by paying the
23 standard filing fee and submitting a Complaint (ECF No. 1). He subsequently filed an Amended
24 Complaint (ECF No. 8) naming as defendants (1) Steven B. Wolfson (Clark County District
25 Attorney), (2) Clark County District Attorney's Office Family Support Division ("DA's Family
26 Support Division"); (3) Jane Doe and John Doe 1-10 Assistant District Attorneys, (4) Candice
27 Katie Towner (the mother of his alleged child), (5) Jane Femiano (Hearing Master), (6) Jeffrey
28 Witthun (Director of DA's Family Support Division), (7) Veronica Gomez (Agent of DA's Family

1 Support Division), (8) Aarin Bailey (Agent of DA's Family Support Division), (9) Arthur T.
2 Ritchie, Jr. (Nevada District Court Judge), (10) Nevada Department of Health and Human Services
3 ("Nevada HHS"), (11) Edward Heidig (HHS Regional Director), and (12) Aaron D. Ford (Nevada
4 Attorney General).

5 The record indicates that summons have been executed on Defendants Femiano and
6 Towner. *See Executed Summons* (ECF Nos. 24, 25).¹ On February 15, 2019, Defendants
7 Ritchie and Femiano filed a Motion to Dismiss (ECF No. 14) the Amended Complaint.² These
8 defendants filed a Motion to Stay Discovery (ECF No. 27), on February 21, 2019 to which Silver
9 has not filed response.

10 **DISCUSSION**

11 **I. MOTION FOR NON-CONSENT TO MAGISTRATE JUDGE (ECF No. 13)**

12 The motion states Mr. Silver will not consent to a magistrate judge hearing his civil case
13 because he has a right to be heard by an Article III judge appointed for life. Article III of the
14 United States Constitution established the federal judiciary as one of the three equal branches of
15 government. Generally speaking, the federal judiciary is comprised of three levels of courts: the
16 Supreme Court, courts of appeals, and district courts. Pursuant to Article III, the President
17 nominates Supreme Court justices, court of appeals judges and district court judges, who are then
18 confirmed by the Senate for a life term. *See FAQs: Federal Judges*, United States Courts,
19 <http://www.uscourts.gov/faqs-federal-judges>. Two types of federal judges serve in the district

20 ¹ Mr. Silver has filed a Certificate of Service (ECF No. 32) for Defendants Wolfson, Heidig, and Ritchie
21 claiming that service was accomplished via certified mail. Silver is advised that both federal and Nevada
22 law require a plaintiff to complete personal service of the summons and complaint to defendant individuals
23 unless the defendant waives service. *See Fed. R. Civ. P. 4(e)(2); Nev. R. Civ. P. 4(d)(6)*. Accordingly,
24 courts in this district have found that attempts to serve defendants by certified mail are deficient. *See, e.g.*,
Cabrera v. Las Vegas Metro. Police Dep't, No. 2:12-cv-00918-RFB-CWH, 2014 WL 6634821, at *3 (D.
25 Nev. Nov. 21, 2014); *Bonavito v. Nevada Prop. 1 LLC*, No. 2:13-cv-417-JAD-CWH, 2013 WL 5758129,
26 at *1–2 (D. Nev. Oct. 21, 2013).

27 ² The Motion to Dismiss is now fully briefed. *See* Pl.'s Responses (ECF Nos. 26, 29), Defs.' Reply (ECF
28 No. 35). Mr. Silver has filed two opposition briefs. Local Rule 7-2 allows a motion, *one* response, and *one*
leave of court and "motions for leave to file a surreply are discouraged." LR 7-2(b). The court will not
permit parties to violate the rule prohibiting supplementation in a never-ending attempt to have the last
word. Mr. Silver is warned that continued duplicative filings may result in the imposition of sanctions,
including dismissal of this case for engaging in abusive litigation tactics. Unless and until the district judge
orders otherwise, the Motion to Dismiss will be decided on the parties' briefs already on the record.

1 courts: district judges and magistrate judges. District judges are appointed and confirmed under
2 Article III and serve a life term. *Id.* However, magistrate judges are judicial officers appointed
3 under Article I of the Constitution by a majority vote of the district judges to serve a renewable
4 term of eight years. *Id.*

5 28 U.S.C. § 636 addresses the jurisdiction and powers of magistrate judges. *See also* Fed.
6 R. Civ. P. 72. Magistrate judges may “hear and determine *any pretrial matter* pending before the
7 court,” “conduct hearings, including evidentiary hearings,” and submit “proposed findings of fact
8 and recommendations” to the assigned district judge for dispositive matters. 28 U.S.C. § 636(b)(1)
9 (emphasis added); *see also* Fed. R. Civ. P. 72 (distinguishing between non-dispositive and
10 dispositive pretrial matters);³ *S.E.C. v. CMKM Diamonds, Inc.*, 729 F.3d 1248, 1259–60 (9th Cir.
11 2013) (district judges “may designate a magistrate judge to hear any nondispositive pretrial matter
12 pending before the court” (citation omitted)). Magistrate judges may also be assigned additional
13 duties, which will vary considerably from district to district, and may also vary between district
14 judges. *See* 28 U.S.C. § 636(b)(3), (4). The district judges of each district determine what duties
15 to assign to its magistrate judges in order to best meet the needs of that district. *Id.*⁴ In the District
16 of Nevada, magistrate judges are utilized to the full extent of their statutory authority, and exercise
17 general supervision of civil and criminal calendars, conduct pretrial conferences, proceedings and
18 settlement conferences in civil and criminal cases, and conduct an early neutral evaluation in
19 employment discrimination actions. *See* LR IB 1-7; LR 16-6.

20 Mr. Silver’s motion states that he has “a right to be heard by an article III Judge.” The
21 Honorable Andrew P. Gordon, United States District Judge—an Article III judge—is assigned to
22 this case. However, in this district, each case is automatically assigned to both a magistrate judge
23 and a district judge at the time the complaint is filed. The District of Nevada has an automatic
24 referral system that determines which motions and proceedings are heard and decided by a

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26 ³ A “dispositive” matter is one that may bring “about a final determination” in a case. *See* Black’s Law
27 Dictionary (10th ed. 2014) (defining “dispositive motion” as one requesting “a trial-court order to decide a
claim or case in favor of the movant without further proceedings”).

28 ⁴ *See also* Peter G. McCabe, *A Guide to the Federal Magistrate Judge System* 7 (Aug. 2014), available at
<http://www.fedbar.org/PDFs/A-Guide-to-the-Federal-Magistrate-Judge-System.aspx?FT=.pdf>.

1 magistrate judge and which motions and proceedings are heard and decided by a district judge.
2 Judge Gordon will hear and decide dispositive motions. The assigned magistrate judge will
3 automatically be referred most motions addressing case management, pretrial non-dispositive
4 motions, and discovery related motions. The assigned magistrate judge will only decide motions
5 for which there is Article I jurisdiction. The district judge will finally decide matters for which
6 there is Article III jurisdiction. To the extent Silver's motion seeks to decline having a magistrate
7 judge decide matters automatically or specifically referred by the district judge within the
8 magistrate judge's Article I authority, the motion is denied.

9 **II. SILVER'S DISCOVERY MOTIONS (ECF Nos. 17, 20, 21, 22, 23, 42)**

10 Silver has filed multiple motions seeking to compel discovery and production of
11 documents. Subject to a few exceptions, discovery may begin only after the court enters a
12 scheduling order. *See* Fed. R. Civ. P. 16; LR 16-1(b): LR 26-1. Unless a case is exempt, Rule 16
13 requires the court to issue a scheduling order limiting the time to complete discovery, join other
14 parties, amend pleadings, and file motions. Fed. R. Civ. P. 16(b), 26(f). Local Rule 26-1 addresses
15 the timing, filing and contents of discovery plan and scheduling orders in civil cases. After the
16 parties have held the conference required by Rule 26(f) of the Federal Rules of Civil Procedure,⁵
17 the Local Rules of Civil Practice require the parties to submit a stipulated discovery plan and
18 scheduling order. LR 26-1. If no proposed discovery plan and scheduling order is submitted, the
19 court will enter a standard order "within the earlier of 90 days after any defendant has been served
20 with the complaint or 60 days after any defendant has appeared." Fed. R. Civ. P. 16(b)(2).

21 Here, Mr. Silver has filed numerous discovery-related motions: Motions to Compel
22 Discovery (ECF Nos. 17, 20), Motion for Clarification re: Proof of Employment (ECF No. 21),
23 and Motions for Production of Documents (ECF Nos. 22, 23, 42). The court notes that each
24 document filed as a "motion to compel" or "motion for production of documents" is actually titled
25 a "demand to produce," "request for interrogatories" or "demand for production."⁶ Each plainly

26 ⁵ All references to a "Rule" or the "Federal Rules" in this Order refer to the Federal Rules of Civil
27 Procedure.

28 ⁶ The Local Rules of Practice state that a "filer is responsible for designating the *accurate title* of a
document filed in the electronic filing system." LR IC 2-2(c) (emphasis added). The filer must also select

1 requests written discovery—not relief from the court. Although the Motion for Clarification (ECF
2 No. 21) includes the word “motion” in the title, it also requests discovery from the defendants.

3 Filing a motion or demand with the court is not the proper procedure for requesting written
4 discovery materials from a party. Rather, discovery requests must be served *directly on opposing*
5 *parties*, who then have 30 days to respond. *See* Fed. R. Civ. P. 34. The Local Rules of Civil
6 Practice also provide:

7 Unless the court orders otherwise, *written discovery, including discovery requests, discovery responses, deposition notices, and deposition transcripts, must not be filed with the court*. Originals of responses to written discovery requests must be served on the party who served the discovery request, and that party must make the originals available at the pretrial hearing, at trial, or when ordered by the court....

10 LR 26-8 (emphasis added). Thus, “[d]iscovery is supposed to proceed with minimal involvement
11 of the Court.” *Cardoza v. Bloomin’ Brands, Inc.*, 141 F. Supp. 3d 1137, 1145 (D. Nev. 2015).

12 The parties have not submitted a proposed discovery plan and scheduling order and it is
13 premature for the court to enter one given the current procedural posture of this case. It is not clear
14 whether the named defendants have been properly served with process. It does not appear that Mr.
15 Silver has initiated the process for conducting a Rule 26(f) conference and preparation of a
16 proposed discovery plan and scheduling order. Furthermore, Defendants Ritchie and Femiano
17 have filed a Motion to Stay Discovery (ECF No. 27) until after their motion to dismiss is decided.

18 Mr. Silver’s discovery motions do not show that he served discovery requests on the named
19 defendants. A motion is ordinarily not the mechanism for obtaining discovery. Discovery is
20 conducted pursuant to Federal Rules 26–36. Discovery requests are served on counsel for
21 opposing parties. They are not filed with the court. *See* LR 26-8. The motions do not state any
22 grounds for allowing expedited discovery prior to entry of a scheduling order. The motions are
23 therefore denied. Once a scheduling order is entered, Mr. Silver may then serve written discovery
24 requests directly on the named defendants in accordance with the Rules. Mr. Silver should
25 carefully review the discovery rules contained in Rules 26–36 of the Federal Rules and the Local
26 Rules of Practice to ensure that he follows the appropriate procedures.

27 the correct “type of ‘event’ for each filed document *based on the relief requested or the purpose of a*
28 *document.*” LR IC 2-2(b). Mr. Silver’s motions violate LR IC 2-2(b) and (c) in addition to the other
deficiencies identified in this Order.

The court appreciates that it is difficult for pro se parties to litigate their claims. Plaintiffs are well advised to familiarize themselves with the Federal Rules, the Local Rules of Practice, and relevant case law as much as possible.⁷

Accordingly,

IT IS ORDERED: Plaintiff Frederick Omoyuma Silver's Motion for Non-Consent to Magistrate Judge (ECF No. 13), Motion to Compel Discovery (ECF No. 17), Second Motion to Compel Discovery (ECF No. 20), Motion for Clarification re: Proof of Employment (ECF No. 21), Motion for Production of Documents (ECF No. 22), Second Motion for Production of Documents (ECF No. 23), and Third Motion for Production of Documents (ECF No. 42) are **DENIED**.

Dated this 8th day of March, 2019.

Peggy A. Leen
PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE

⁷ The Federal Rules of Civil Procedure may be accessed on the United States Courts website free of charge at: www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure. The Local Rules of Practice may be accessed from this court's website free of charge at <http://www.nvd.uscourts.gov>.